IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 24, 2009

STATE OF TENNESSEE v. DAVID RAY WILLIAMS

Direct Appeal from the Criminal Court for Loudon County
No. 11101 E. Eugene Eblen, Judge

No. E2008-01045-CCA-R3-CD - Filed December 17, 2009

The appellant, David Ray Williams, pled guilty to manufacturing marijuana and possessing drug paraphernalia, and he received a total effective sentence of two years. As a condition of his plea, the appellant reserved a certified question of law, namely whether there was valid consent to search the appellant's property. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Michael W. Ritter, Oak Ridge, Tennessee, for the appellant, David Ray Williams.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Russell Johnson, District Attorney General; and Frank Harvey, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On December 12, 2005, the Loudon County Grand Jury returned a multi-count indictment charging the appellant with possession of not less than half an ounce nor more than ten pounds of marijuana with the intent to sell, possession of not less than half an ounce nor more than ten pounds of marijuana with the intent to deliver, manufacturing marijuana, and possession of drug paraphernalia. The appellant filed a pretrial motion to suppress the evidence of the contraband, contending that the police illegally searched his house. Specifically, the appellant contended that the police did not have a search warrant to search his residence and that the premises were searched without valid consent.

At the suppression hearing, Corporal Paul Curtis of the Loudon County Sheriff's Department was the sole witness. Corporal Curtis testified that on October 1, 2004, he went to 14970 Hickory Creek Road in Lenoir City to perform a "knock and talk" to investigate a complaint of marijuana growth. Corporal Curtis was accompanied by Sergeant Billy Hall and Investigators Johnny Crisp and Jonathan Yates.[1]

When the officers arrived at the residence, Corporal Curtis and Investigator Crisp went to the door and knocked. The officers were in plain clothes, and they did not have their weapons drawn. A white female adult answered the door. The officers asked the female who she was, and she responded that she was the appellant's daughter. She was asked if she lived at the residence, and she said that she did. The officers did not see the appellant in the house; however, they saw a teenager and an adult male. The officers explained to the appellant's daughter that they were there to investigate a tip that a methamphetamine laboratory was in the residence. The appellant's daughter told the officers there was no laboratory of any type in the house. The officers asked for permission to search the house, and she consented to the search.

Corporal Curtis said that he and Investigator Crisp entered the main part of the residence and then walked down the hallway. As they walked down the hallway, they smelled a "very strong, pungent odor of marijuana" coming from behind a closed door. Corporal Curtis explained that marijuana has a "distinct" odor which he had been trained to recognize and had previously encountered. The officers asked the appellant's daughter for permission to search behind the door. The daughter replied that the room belonged to her father, the appellant, and that she did not feel comfortable consenting to a search of the room. The officers inquired as to the appellant's whereabouts, and the daughter said that he was mowing the back yard. The officers asked the daughter to get the appellant, and the daughter and the officers then left the house.

Corporal Curtis said that when they exited the house, they saw the appellant coming around the front of the house from the back yard. Corporal Curtis, Investigator Crisp, and Sergeant Hall met with the appellant at the corner of the house near the front porch. Corporal Curtis told the appellant that the officers had just been inside the house and that they had smelled marijuana. He asked the appellant for permission to search his house, his bedroom in particular. Corporal Curtis told the appellant that he had the right to grant or refuse consent. However, Corporal Curtis explained that if the appellant refused consent, the officers would apply for a search warrant. Corporal Curtis testified that his encounter with the appellant was conversational in tone and was not threatening. Corporal Curtis recalled that the appellant asked that his children be allowed to leave before police searched. Corporal Curtis stated that the appellant said that once his children were gone, "he would be glad to let us in and show us what he had."

After the appellant's children left, the appellant led the officers to his bedroom and pointed to a closet. The officers saw eight gallon-sized plastic bags of marijuana hanging in the closet. Additionally, police saw drug paraphernalia, including a set of scales and some other items, in plain view in the bedroom. Corporal Curtis testified that at that time, the appellant revoked his consent

[1] In the record, "Johnny Crisp" is also referred to as "Joni Crisp."

to search. The police ushered everyone from the house and left to obtain a search warrant. Investigator Crisp obtained a search warrant, and police continued the search of the house and the outbuildings.

Corporal Curtis acknowledged that neither the appellant nor his daughter signed a consent to search form. However, he maintained that both parties gave verbal consent to search.

Based upon the foregoing proof, the trial court denied the appellant's motion to suppress, finding that the search of the appellant's residence was based upon valid consent. Thereafter, the appellant pled guilty to manufacturing marijuana, with an accompanying sentence of two years, and possessing drug paraphernalia, with a sentence of eleven months and twenty-nine days. The trial court ordered that the sentences be served concurrently, for a total effective sentence of two years. As a condition of the plea, the appellant reserved a certified question of law "regarding the legality of the search and seizure as it relates to consent to search."

II. Analysis

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton,41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Moreover, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998).

The appellant asserts that the police did not have valid consent to search his home. Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution provide protection for citizens against "unreasonable searches and seizures." Generally, a warrantless search is considered presumptively unreasonable, thus violative of constitutional protections. See State v. Walker, 12 S.W.3d 460, 467 (Tenn. 2000). Our supreme court has said that, "[i]t is, of course, well settled that one of the exceptions to the warrant requirement is a search conducted pursuant to consent." State v. Bartram, 925 S.W.2d 227, 230 (Tenn. 1996) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 219, (1973), and State v. Jackson, 889 S.W.2d 219, 221 (Tenn. Crim. App. 1993)). Generally, consent may be given "either by the individual whose property is searched or by a third party who possesses common authority over the premises." State v. Ellis, 89 S.W.3d 584, 592 (Tenn. Crim. App. 2000) (citations omitted). "The sufficiency of consent depends largely upon the facts and circumstances in a particular case." Jackson, 889 S.W.2d at 221. The prosecution bears the burden of proving that the appellant freely and voluntarily gave consent. See State v. McMahan, 650 S.W.2d 383, 386 (Tenn. Crim. App. 1983). We further observe that

"'[t]he existence of consent and whether it was voluntarily given are questions of fact.'" State v. Ashworth, 3 S.W.3d 25, 29 (Tenn. Crim. App. 1999) (quoting McMahan, 650 S.W.2d at 386).

First, we will address the validity of the appellant's daughter's consent to police entering the appellant's house. As we stated earlier, consent may be given by the individual whose property is searched or by a third party with common authority over the premises. See Ellis, 89 S.W.3d at 592. The United States Supreme Court has defined common authority as the

> mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

United States v. Matlock, 415 U.S. 164, 171 n.7, 94 S. Ct. 988, 993 n.7 (1974); see also Georgia v. Randolph, 547 U.S. 103, 110, 126 S. Ct. 1515, 1521 (2006); Bartram, 925 S.W.2d at 231. However, this court has previously explained that

> [t]he State may satisfy its burden of proof in this regard either by demonstrating that the third party in fact possessed common authority. . . or, alternatively, by demonstrating that the facts available to the searching police officers would have warranted "'"a man of reasonable caution in the belief"' that the consenting party had authority over the premises."

Ellis, 89 S.W.3d at 593 (quoting Illinois v. Rodriguez, 497 U.S. 177, 188-89, (1990)).

In the instant case, the proof at the suppression hearing revealed that when police knocked on the door of the appellant's residence, a woman answered the door. Police ascertained the woman's identity and determined that she lived at the residence. The woman gave the officers permission to enter the residence to search for drugs, and she permitted them entry. The appellant did not present any proof that his daughter did not have authority to give consent.[2] The trial court found that the search of the appellant's residence was based upon valid consent. We can find no evidence to preponderate against the trial court's finding.

The appellant also maintains that his consent to search the residence was not voluntary because he was coerced when Corporal Curtis approached him in the yard and "threat[ened]" to obtain a search warrant. Generally, "[b]aseless threats to obtain a search warrant may render consent involuntary." United States v. White, 979 F.2d 539, 542 (7th Cir. 1992); see also Ashworth, 3 S.W.3d at 30. However, if the threat to obtain a search warrant is not baseless, that is, if police have

[2] Notably, on appeal the argument section of the appellant's brief states that his "daughter testified at the preliminary hearing that as she moved aside the officers walked into the house," arguing that "this is not consent to enter." However, the appellant's daughter did not testify at the suppression hearing.

probable cause to obtain a search warrant, the threat does not render consent to search involuntary. See Simmons v. State, 360 S.W.2d 10, 12 (Tenn. 1962). In the instant case, after the appellant's daughter gave permission for police to enter the residence, officers smelled a strong odor of marijuana coming from behind the appellant's bedroom door. Accordingly, there was sufficient probable cause to obtain a search warrant for the appellant's bedroom. See State v. Gary Raines, No. 01C01-9703-CC-00108, 1998 WL 96420, at *4 (Tenn. Crim. App. at Nashville, Mar. 5, 1998). Again, the trial court found that the search of the appellant's bedroom was based upon valid consent. We can find no evidence to preponderate against this finding.

III. Conclusion

Based upon the foregoing, we affirm the judgments of the trial court.

NORMA McGEE OGLE, JUDGE